



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

Preston Bryant
Secretary of Natural Resources

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David K. Paylor
Director

R. Bradley Chewning, P.E.
Regional Director

STATE WASTE BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

Power Systems International, Inc
(EPA Permit ID# VACESQG)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1455 between the State Waste Control Board and Power Systems International, Inc for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Waste Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "Power Systems" means Power Systems International, Inc., the owner and operator of the Facility.
7. "Facility" means Power Systems International, Inc. located in Natural Bridge Station, Rockbridge County, Virginia.
8. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
9. "NOV" means Notice of Violation.

SECTION C: Findings of Fact and Conclusions of Law

1. On November 30, 2005, DEQ staff conducted a hazardous waste compliance inspection at the Facility. The original intent of the visit was to inspect the Facility following the guidelines for a Conditionally Exempt Small Quantity Generator (CESQG), which is described in 40 CFR 265.5 as any facility that generates less than 100 kilogram (kg) per month of hazardous waste. However, during the inspection DEQ staff obtained information that shows that the Facility generated 909 kg, 363.6 kg, and 727.27 kg in April, June, and September, 2005, respectively. Accordingly, although the Facility conducted itself as a CESQG, it generated more than 100 kg/month of hazardous waste and meets the criteria contained in 40 CFR 262 Subpart D, as a small quantity generator.
2. On December 6, 2005, DEQ issued Notice of Violation **WS-05-11-VRO-58** to the Facility for the eight alleged violations observed during the November 30, 2005 inspection. The DEQ made the following observations:
 - A. Power Systems exceeded the 100 kg limit of hazardous waste per month that is required to be considered a conditionally exempt small quantity generator as required by 40 CFR 261.5 (a), as incorporated in 9 VAC 20-60-261.
 - B. Power Systems had not made arrangements with local emergency authorities and local hospital as required by 40 CFR 265.37 (a) (1-4) as referenced by 40 CFR 262.34 (d) (4). as incorporated in 9 VAC 20-60-262.
 - C. Power Systems had not designated at least one employee, either on the premises or on call at all times, to serve as the emergency coordinator with the responsibility to coordinate response measures as required by 40 CFR 262.34 (d) (5) (i). as incorporated in 9 VAC 20-60-262.
 - D. Power Systems had not posted the following information next to the facility telephone: Facility site map displaying the location of fire extinguishers and spill control material, the name and telephone number of the emergency

coordinator, and the telephone number of the fire department. This information in required by 40 CFR 262.34 (d) (5) (ii) (A-C). as incorporated in 9 VAC 20-60-262.

- E. Power Systems had labeled two drums of hazardous waste showing the date when the hazardous waste was first placed in the 180 day accumulation area did not contain a date as required by 40 CFR 262.34 (a)(2) and 40 CFR 262.34 (d) (4) as incorporated in 9 VAC 20-60-262.
 - F. Power Systems had drums of hazardous waste in the satellite container area not marked with the words "Hazardous Waste", or other words that identify the contents of the container as required by 40 CFR 262.34 (c) (1) (ii) as incorporated in 9 VAC 20-60-262.
 - G. Power Systems had not inspected hazardous waste containers on a weekly basis as required by 40 CFR 265 as incorporated in 9 VAC 20-60-265.
 - H. Power Systems had two drums of hazardous waste in the 180 day accumulation area not properly labeled or marked clearly with the words "Hazardous Waste" as required by 40 CFR 262.34 (a) (3) and 40 CFR 262.34 (d)(4) as incorporated in 9 VAC 20-60-262.
- 3. Through the implementation of proper procedures, labeling, storage, and documentation, Power Systems has completed all actions necessary to satisfy the requirements set forth in this document.
 - 4. Power Systems agrees to enter into an Order, this document, and pay civil charges for the alleged violations noted in the Notice of Violation dated December 6, 2005, and noted above.

SECTION D: Agreement and Order

Accordingly, the Waste Board, by virtue of the authority granted it under Section 10.1-1455 of the Va. Code orders Power Systems and Power Systems agrees, to perform the actions of this Order. In addition, the Board orders Power Systems and Power Systems voluntarily agrees, to pay a civil charge of **\$10,240 within 60 days of the effective date of the Order** in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Power Systems shall include its Federal Identification Number with the civil charge payment and shall note on the check that payment is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Power Systems, for good cause shown by Power Systems, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in NOV **WS-05-11-VRO-58**, issued to Power Systems on December 6, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Power Systems admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Power Systems consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Power Systems declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.* and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Power Systems to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Power Systems shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Power Systems shall show that such circumstances were beyond its control and not due to a lack of good faith or

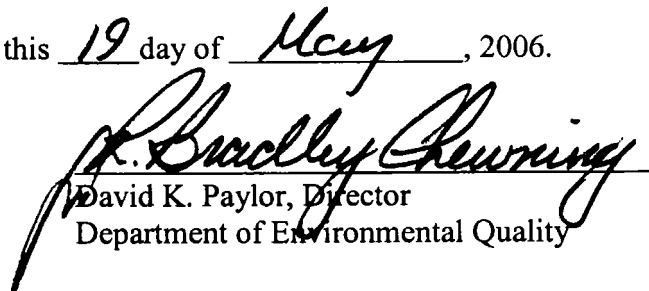
diligence on its part. Power Systems shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- A. the reasons for the delay or noncompliance;
- B. the projected duration of any such delay or noncompliance;
- C. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- D. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Power Systems intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Power Systems. Notwithstanding the foregoing, Power Systems agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Power Systems. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Power Systems from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Power Systems voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19 day of May, 2006.


David K. Paylor, Director
Department of Environmental Quality

Power Systems voluntarily agrees to the issuance of this Order.

By: David Dugan, CFO

Date: 04-05-06

Commonwealth of Virginia

City/County of Rockbridge

The foregoing document was signed and acknowledged before me this 5th day of April, 2006, by David Dugan, who is
(name)

CFO of Power Systems, on behalf of the corporation.
(title)

Cathy M. [Signature]
Notary Public

My commission expires: Nov. 30, 2008